

R82. Alcoholic Beverage Control, Administration.

R82-5. General Retail License Provisions.

R82-5-101. Definitions.

- (1) Authority. This rule is made pursuant to sections 32B-1-102 and 32B-2-202.
- (2) Definitions. As used in this rule:
 - (a) "Dispensing System" means a system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.
 - (b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:
 - (i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;
 - (ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
 - (iii) that has adequate kitchen or culinary facilities on the premises to provide complete meals; and
 - (iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.
 - (c) "Sports center" is a publicly or privately owned or operated facility:
 - (i) that is designed primarily to attract people to and accommodate people at sporting events;
 - (ii) that has a fixed seating capacity for more than 2,000 persons;
 - (iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;
 - (iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and
 - (v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.
 - (d) "Convention center" is a publicly or privately owned or operated facility:
 - (i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;
 - (ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and
 - (iii) that is in total at least 30,000 square feet.
- (3)(a) A "banquet contract" means an agreement between an on-premise banquet licensee and a third party host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.
- (b) Each "banquet contract" shall:
 - (i) clearly define the location of the private banquet function;
 - (ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and
 - (iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

R82-5-102. Licensing, Ownership, and Transfer of License.

- (1) This rule is pursuant to section 32B-5-310, which authorizes the Department to make rules governing requirements for interim alcoholic beverage management agreements.
- (2) Licenses are issued to persons. A licensee must communicate any contemplated action or transaction that may alter an organizational structure or ownership interest of the person to whom a license is issued to the Department so staff may ensure there is no violation of section 32B-5-310.
- (3) An interim alcoholic beverage management agreement is required if a buyer will be performing the day-to-day operations of the business before the Commission approves the transfer of the license from seller to buyer.
- (4)(a) Before a retail licensee enters into an interim alcoholic beverage management agreement, it shall provide the proposed interim alcoholic beverage management agreement to the Department for its approval.
- (b) The Department shall create a checklist of information that an interim alcoholic beverage management agreement must contain.
- (c) The Department shall review a proposed interim alcoholic beverage management agreement and, no later than 15 business days after the day on which the agreement is received by the Department:
 - (i) approve the interim alcoholic beverage management agreement if it contains all the necessary information; or
 - (ii) return the proposed interim alcoholic beverage management agreement to the licensee, if the agreement is lacking in information or specificity, with guidance on how to remedy any errors or omissions.
- (5) Once an interim alcoholic beverage management agreement has been approved by the Department, the seller may allow the buyer to use their license to purchase alcoholic product from the Department, but all revenue from the sale of alcohol during the transition period must be retained by the buyer, less the cost of reimbursing the seller for the cost of the alcoholic product paid to the Department.
- (6) The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license, but the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.
- (7) Nothing in this rule authorizes a licensee to close business without approval from the Department or Commission, as required by statute.

R82-5-103. Application.

- (1) No license or sublicense application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license until:
 - (a) The applicant has first met all requirements of sections 32B-1-304 and 32B-5-201 through 207; and
 - (b) the Department has inspected the applicant's premise(s).
- (2)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (1)(a) must be filed on the next business day after the 10th day of the month.

- (b) An incomplete application will be returned to the applicant.
- (c) A completed application filed after the deadline in subpart (2)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.
- (3) Subpart (1)(a) of this rule does not preclude the Commission from considering an application for conditional licensure, pursuant to section 32B-5-205.
- (4)(a) Applicants may apply for a Master Full-Service Restaurant or Master Limited Service Restaurant License, as defined by sections 32B-6-206 and 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.
- (b) The five or more locations described in subpart (4)(a) of this rule must be owned by the same person or entity.
- (c) Locations that do not already have a full or limited service restaurant license must meet all requirements for licensing as a full service or limited service restaurant under subpart (1) of this rule.
- (d) Once the master license is granted, the licensee may add additional locations by filing an application approved by the Department demonstrating that the location meets all application requirements under subpart (1) of this rule.
- (5) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.
- (6) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.
- (7) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.
- (8) If an applicant has at any time been denied a license or permit based on any other factor the Commission considers necessary, the Commission may, in its discretion determine under what circumstances in which a further application will be considered.
- (9) The Commission may prescribe a time period between the denial and hearing a request for further application.

R82-5-104. Liquor Dispensing Systems.

- (1) This rule is made pursuant to sections 32B-5-301, which requires retail licensees and retail licensee staff to comply with rules made by the Commission regarding general operational requirements of a retail licensed establishment, and 32B-5-304, which requires the Department to approve a liquor dispensing system.
- (2) Purpose. This rule describes the minimum requirements for a liquor dispensing system, which is required by section 32B-5-304, and how the Department approves a liquor dispensing system.
- (3)(a) A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the Department.
- (b) After the Department's approval, a licensee may only change its dispensing system with prior approval by the Department.
- (4) A dispensing system may be approved by the Department if it meets the following minimum requirements:
 - (a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;
 - (b) has a meter which counts the number of pours dispensed; and
 - (c) the margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.
- (5) Types of systems. Dispensing systems may be of various types, including: gun, stationary head, tower, insertable spout, ring activator or similar method.
- (6) Licensee Responsibility.
 - (a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subpart (1) of this rule. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.
 - (7) Operational restrictions.
 - (a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.
 - (b)(i) Voluntary consent is given that representatives of the Department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes.
 - (ii) A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.
 - (c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system, defined in R82-5-105, which has been approved by the Department must be in a locked storage area identified on the licensee's floorplan. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.
 - (d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.
 - (e) All dispensing systems and devices must:
 - (i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;
 - (ii) not dispense from or utilize containers other than original liquor bottles; and
 - (iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.
 - (f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.
 - (g) Each licensee shall keep daily records for each dispensing outlet as follows:
 - (i) a list of brands of liquor dispensed through the dispensing system;

- (ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;
- (iii) number of portions of liquor sold; and
- (iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.
- (v) The records described in subpart (4)(g) of this rule must be made available for inspection and audit by the Department or law enforcement.
- (h) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.
- (i) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the Department may:
 - (i) require the alteration or removal of any system; and
 - (ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R82-5-105. Multiple-Licensed Facility Storage and Service.

- (1) For the purposes of this rule:
 - (a) "premises" as defined in section 32B-1-102 shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, bar, or on-premise beer retailer operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license or hotel license under Title 32B, Chapter 8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.
 - (b) the terms "sell", "sale", "to sell" as defined in section 32B-1-102 shall not apply to a cost allocation of alcoholic beverages as used in this rule.
 - (c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.
 - (d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.
- (2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:
 - (a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;
 - (b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of section 32B-5-302;
 - (c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;
 - (d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;
 - (e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;
 - (f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.
- (3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following:
 - (a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive Department approval of the location;
 - (b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and
 - (c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R82-5-106. Order and Return Procedures.

- The following procedures shall be followed when a licensee orders liquor from or returns liquor to any state liquor store, package agency, or Department satellite warehouse:
- (1)(a) The licensee must place the order in advance to allow Department personnel sufficient time to assemble the order.
 - (b) The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order.
 - (c) The order shall include the business name of the licensee, Department licensee number, and list the products ordered specifying each product by code number and quantity.
 - (d) If the licensee utilizes the services of a liquor transporter, as described in section 32B-17-201, the licensee shall provide that information when the licensee places the order.
 - (2)(a) The licensee shall allow at least four hours for Department personnel to assemble the order for pick-up.
 - (b) When the order is complete, the licensee will be notified by phone and given the total cost of the order.
 - (c) The licensee may pay for the product with any form of legal tender.
 - (d) The Department may make policies governing acceptable forms of payment, consistent with this rule.
 - (3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.
 - (4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the Department, be provided to a licensee on an allocated basis.
 - (5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:
 - (i) the bottle has not been opened;

- (ii) the seal remains intact;
 - (iii) the label remains intact; and
 - (iv) upon a showing of the original cash register receipt.
- (b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.
- (c) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R82-5-107. Identification.

- (1) This rule is made pursuant to section 32B-5-301. The purpose of this rule is to ensure that an individual who sells, dispenses, or provides alcoholic beverages is easily identifiable to a member of the public, Department staff, or law enforcement.
- (2) Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the Department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R82-5-108. Menus and Price Lists.

- (1) Authority. This rule is made pursuant to sections 32B-2-206, 32B-2-202 and 32B-5-305. The purpose of this rule is to provide consumers with information and prevent discounting of alcohol or unlawful promotions.
- (2) Contents of Alcoholic Beverage Menu.
- (a)(i) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all liquor, mixed drinks, wine, beer, and heavy beer.
- (ii) The list or menu described in subpart (2)(a)(i) of this rule shall include any charges for the service of packaged wines or heavy beer.
- (b) A printed menu, master beverage price list, or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.
- (c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.
- (d) A licensee or employee of a licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R82-5-109. Sale of Alcoholic Beverages by Licensees to Patrons.

- (1) Authority. This rule is made pursuant to sections 32B-6-205, 32B-6-305, 32B-6-406 and 407, 32B-6-505, 32B-6-605, 32B-6-706, 32B-6-805, 32B-6-905, and Title 32B, Chapters 8a and 8b.
- (2)(a) A licensee that is required to maintain a percentage of food sales by statute shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food, as relevant to the licensee. These records shall be available for inspection and audit by representatives of the Department and maintained for a period of three years.
- (b) If any inspection or audit discloses that the sales of food are less than statutorily required for any quarterly period or that a variety of food is not available for sale, depending on the requirements of the license, the Department shall immediately notify the licensee and may put the licensee on a probationary status and closely monitor the licensee's compliance with statutory requirements during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the Department that of the licensee's food sales or food availability meet or exceed the required levels.
- (c) Failure of the licensee to provide satisfactory proof of the required food percentage or availability of a variety of food for sale after notification, as described in subpart (2)(b) of this rule, may result in issuance of an order to show cause by the Department to determine why the license should not be revoked by the Commission, as described in R82-3-104.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

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